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March 3, 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: In the Matter of Amendment to Section 73.202(b)
MM Docket No. 92-202
RM-8051
Table of Allotments, FM Broadcast Stations
(Newberry Springs, California)

Dear Ms. Searcy:

On behalf of Henry Broadcasting Company, licensee of Radio Station KHTX(FM), San Bernardino, California, we are filing herewith an original and four copies of its "Reply to Opposition to Motion to Accept Late Filed Comments" with respect to the above-captioned proceeding.

Should any questions arise with respect to this matter, please contact the undersigned counsel.

Respectfully submitted,

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER

By


Allan G. Moskowitz

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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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MAR 3 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)
(Newberry Springs, California))

MM DOCKET NO. 92-202
RM-8051

To: Chief, Allocations Branch

**REPLY TO OPPOSITION TO MOTION
TO ACCEPT LATE FILED COMMENTS**

Henry Broadcasting Company ("Henry"), licensee of Radio Station KHTX(FM), Riverside, California ("KHTX"), by its attorney, hereby submits its "Reply" to the "Opposition to Motion to Accept Late Filed Comments" filed by Hills Broadcasting ("Hills") in the above-referenced proceeding. In support thereof, the following is respectfully shown:

1. Hills opposes KHTX's Late Filed Comments in this proceeding which requested that Channel 279A be allotted to Newberry Springs in lieu of Channel 247A on both procedural and substantive grounds. However, the real significance of Hills' Opposition are the arguments that it doesn't make: It cannot contradict the public interest benefits of allotting Channel 279A instead of Channel 247A.

2. First, Hills relies on Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments (MM Docket No. 91-348), 7 FCC Rcd. 4917 (1992), by arguing that the Report & Order established "complimentary and consistent cut-off procedures for both applications that conflict with rulemaking proposals and for rulemaking proposals that conflict with applications." However, Hills is dead wrong and its

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citation to the Report & Order is purposefully misleading.¹

First, the Report & Order established cut-off procedures to protect pending applications from subsequently filed rulemakings because applications needed protection from subsequently filed rulemakings. Rulemaking proposals for allotments do not need protection from subsequently filed applications as the rulemaking proposal always has priority over a subsequently filed application. However, if possible, the Commission will consider the use of an alternative channel and/or reference coordinates in order to resolve conflicts between applications and rulemakings. See, for example, 7 FCC Rcd. 4917 at 4920; Hampton and Parkersburg, Iowa, 7 FCC Rcd. 7559 (1992); and Germantown, Tennessee, 7 FCC Rcd. 6475 fn. 1 (1992). Therefore, the Report & Order, supra, and the changes to the Commission's Rules which it established, i.e. Section 73.208(a)(3) are inapplicable to this situation.

3. Obviously, KHTX's Comments were late-filed and, as a result, KHTX petitioned for acceptance. It is clear, pursuant to the cases cited by KHTX, that the Commission has accepted late filed comments when the public interest was served by the acceptance of those comments. It is in disputing KHTX's public interest showing that Hills shows the hollowness of its

¹ Contrary to Hills' quotation, the "rules adopted in the Report & Order" were not "designed" to "protect the emergent plans of rulemaking petitioners as well." The Report & Order actually says that the Commission saw "no reason why this procedural window should not prove sufficient to protect the emergent plans of rulemaking petitioners as well." Id at 4920.

Opposition. First, Hills disputes the qualifications of KHTX's technical consultant, Joe Sanford Mauk. Attached hereto as Exhibit 1 is Mr. Mauk's Statement in which Mr. Mauk ably defends his credentials. Suffice it to say that had Hills had any real doubts regarding Mr. Mauk's engineering statements and conclusions it could have rebutted them with an engineering statement of its own. Since Hills has not chosen to do so, it is clear that KHTX's technical arguments in support of the substitution of Channel 279A to Newberry Springs instead of Channel 247A remain unchallenged and undiminished in any way by Hills attack on the qualifications of its technical consultant.

4. Hills' second argument is even more idiotic. Hills argues that the communities that KHTX seeks to serve Hesperia, Victorville, Adelanto and Apple Valley, are 30 to 40 miles north of Riverside, KHTX's city of license, and are in a separate radio market as defined and surveyed by Arbitron. Consequently, Hills concludes that extending KHTX's service to these communities is not in the public interest, only KHTX's.

5. Attached to Mr. Mauk's statement is a map reflecting the existing 60 and 70 dBu contours for KHTX. An examination of the map reveals that KHTX's existing 60 dBu contour fully encompasses the cities of Hesperia, Victorville, Adelanto and Apple Valley and that, in fact, 100% of the city of Hesperia, 50% of Victorville and 1/3 of Apple Valley are presently within KHTX's citygrade contour. Consequently, these communities are, by definition, within KHTX's present service area. However, as previously explained by KHTX, there is presently shadowing in

those areas which KHTX's proposed application seeks to cure. As for Hills' allegation that it is a "separate Victor Valley, California radio market as defined, and surveyed, by Arbitron", the front page of the 1992 Ratings Book states on its face "Audience estimates in the subscriber designed area for Victor Valley, California." Obviously, the subscriber, i.e. a local radio station, specifically requested these audiences estimates in the subscriber's "designed area".

6. Hills also argues that by relocating to a site in the foothills on the southern side of San Bernardino Mountains, KHTX could achieve the same public interest benefits as would result from its pending application. However, as indicated by Mr. Mauk, no fully spaced sites would be available in that area. Mr. Mauk also rebuts, in detail and with documentation, Hills' characterization of KHTX's proposal to strengthen the emergency broadcast system as "sheer sophistry".

7. Most significantly, the one public interest benefit that Hills does not even attempt to rebut or even discuss is the fact that Channel 247A is probably the worst available channel to allot to Newberry Springs. First of all, Channel 247A requires a site restriction whereas Channel 279A does not. Moreover, using Channel 247A, there does not appear to be any possibility of locating the transmitter site at a hill or mountaintop location, nor utilizing the contour protection of Section 73.215 in order to use a transmitter site on one of the mountains south of Newberry Springs. As previously indicated in KHTX's Comments, in order to achieve maximum Class A facilities at the reference

coordinates on Channel 247A it would be necessary to construct a tower nearly 700 feet tall and, in light of the proximity of the Barstow-Daggett Airport, this does not appear feasible. On the other hand, Channel 279A provides a large available site area and will allow for the use of maximum Class A facilities without requiring an extremely tall tower. Channel 279A should be preferred on this basis alone.

8. Finally, in light of the unrebutted technical documentation that Channel 279A is a far superior channel to Channel 247A, if Hills really intends to file an application to serve Newberry Springs as it has repeatedly represented in Commission filings, its objection is inexplicable. The substitution of channels can only benefit Hills and other prospective applicants for this channel. Further, no one, neither Hills, other prospective applicants, nor the Commission will be harmed or prejudiced by the substitution of Channel 279A for Channel 249A. To the contrary, and as previously enumerated by KHTX, numerous public benefits will result by the allotment of Channel 279A to Newberry Springs, California.

9. Consequently, KHTX respectfully requests that the Commission accept its Comments filed in the above-referenced proceeding and allot Channel 279A to Newberry Springs, California in lieu of Channel 249A.

Respectfully submitted,

HENRY BROADCASTING COMPANY

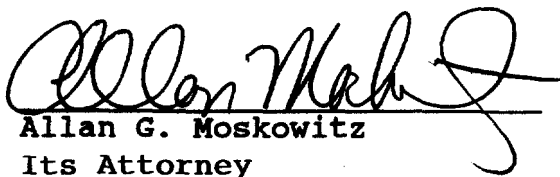
By: 
Allan G. Moskowitz
Its Attorney

EXHIBIT 1

TECHNICAL STATEMENT

IN SUPPORT OF REPLY TO OPPOSITION

TO MOTION TO ACCEPT LATE FILED

COMMENTS

This technical statement has been prepared on behalf of Henry Broadcasting Co. to provide technical information in support of a Reply to Opposition to Motion to Accept Late Filed Comments by Hills Broadcasting. Henry Broadcasting is the licensee of station KHTX operating on FM channel 248B at Riverside, California. Henry Broadcasting filed comments asking that FM channel 279A be substituted in place of FM channel 247A at Newberry Springs, California. The reason for this request was to eliminate a short spacing between the proposed allotment at Newberry Springs, California and Henry Broadcasting's construction permit application (file no. BPH-930125ID) to relocate the KHTX transmitter site.

Hills Broadcasting, questions whether I have "actual knowledge of the factual matters on which the arguments are based" and then, in a footnote, infers that I may have distorted the facts "as an accommodation to his employer". Nothing could be further from the truth. All statements contained in the "Technical Report in Support of Comments by Henry Broadcasting" are truthful and honest. As for Hills assertion that I may lack necessary credentials, it is pure and unadulterated subterfuge. My experience in radio broadcast engineering is a matter of record with the Commission. I have filed numerous technical statements, construction permit and license applications with the Commission. In addition, Henry Broadcasting engaged the professional services of Mr. Benjamin F. Dawson with the consulting engineering firm Hatfield and Dawson to provide guidance in the preparation of the technical statement.

In relation to my knowledge of the operational aspects of the Emergency Broadcast System in the Riverside-San Bernardino Operational Area, I served as the FCC appointed chairperson for the Riverside-San Bernardino Operational Area Emergency Communication Committee from November 1986 to May 1989. I currently serve as the chairperson of the San Joaquin Valley Operational Area Emergency Communications Committee. These facts give me first hand knowledge of the operational aspects of the Emergency Broadcast System, in general and with respect to the Riverside-San Bernardino Operational Area.

Figure 1 is a coverage map that shows the existing 60 and 70 dBu signal strength contours of KHTX. An examination of the map reveals that KHTX's existing one millivolt per meter (60 dbu) primary service contour fully encompasses the Cities of Hesperia, Victorville, Apple Valley and Adelanto. In addition, Figure 1 shows that fully one hundred percent of the City of Hesperia, approximately fifty percent of the City of Victorville and approximately thirty-three percent of the City of Apple Valley lie within the 3.16 millivolt per meter (70 dBu) city grade signal strength contour.

Henry Broadcasting attempted to locate another transmitter site that would satisfy the spacing requirements and/or allow the use of contour protection provisions of Sections 73.207 and 73.215, respectively; none of those remedies were successful. In Hills Broadcasting's "Opposition to Motion to Accept Late-Filed Comments", it is asserted, without any supporting engineering evidence, that Henry Broadcasting should consider "relocating KHTX's facilities to a site in the foothill on the southern side of the San Bernardino Mountains so that the mountains could provide requisite contour protection to the proposed Newberry allotment." Henry Broadcasting has considered that possibility. There is one developed electronic site on the southern face of the San Bernardino Mountains known as Cloudland Trail. Cloudland Trail does not meet the spacing requirements of 73.207 with respect to station KLSX operating on FM channel 246B at Los Angeles, California. Further investigation found that contour protection, pursuant to

Section 73.215, would not remedy the situation with respect to KLSX and that option was abandoned. The remaining south face foothill area is within the San Bernardino National Forest and does not contain any areas designated for use as electronic sites according to the San Bernardino National Forest Plan. As an alternative Henry Broadcasting conducted a search of FM channels available for allotment to Newberry Springs, California. It was determined that a number of other channels were available. In fact, Hills Broadcasting's choice of FM channel 247A was probably "the worst possible channel" since FM channel 247A could not be allotted to Newberry Springs, California without a site restriction. According to the channel search conducted by Henry Broadcasting which is contained in Henry Broadcasting's original comments, all of the other available channels could be allotted without restrictions.

The other obvious point is that a foothill location on the southern face of the San Bernardino Mountains will not solve the terrain shadowing, caused by the San Bernardino Mountain Range, in the northern portion of the KHTX protected coverage area.

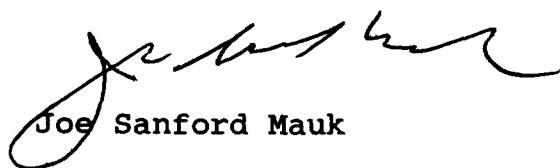
In Hill Broadcasting's opposition comments, Hills characterizes the public safety issues raised by Henry Broadcasting as "sheer sophistry". The improved operation of the Emergency Broadcasting System, without question, serves the Public interest, necessity and convenience. It is clear from Section 73.932 (a) that all radio stations are required to adhere to monitoring assignments contained

in the State Emergency Broadcast System Plan. On Page 6 of the California State EBS plan in Section 1.3.2., it is stated " Common Program Control Station. The broadcast facility designated by the FCC to serve as the control station for all other AM, FM and TV broadcast stations in the EBS Operational Area." In attachment 3 to the California State EBS Plan entitled "Operational Areas in the California EBS Plan" KDUO (former call letters of KHTX) is listed as a CPCS-1 for San Bernardino County. The CPCS-2 station is KNSE/KNTF and the CPCS-3 station is KIOT (former call letters of KIQQ). Hills gives station KZXY-FM and co-owned and co-located KZXY-AM, Apple Valley, CA as an example of being able to receive local and regional EBS messages. Hills states that KZXY AM/FM monitors station KGGI for EBS purposes. This puts KZXY AM/FM in opposition to the California State EBS Plan and in violation of Section 73.932 (a) of the Commission's Rules. The California State EBS plan does not even list KGGI. I personally checked with the Director of the State of California Office of Emergency Services, Mr. Stanley Harter, to determine if the State EBS Plan dated March 1987 is still currently in effect. According to Mr. Harter, the California State EBS Plan dated March 1987 is current and in full effect. Figure 2A, 2B and 2C are reproductions of above cited sections of the Emergency Broadcast System Plan for the State of California.

KHTX has special radio communications links to the San Bernardino County Emergency Operations Center and to the regional and state

headquarters of the State of California Office of Emergency Services. KHTX is the primary entry point for the Riverside-San Bernardino Operational Area Emergency Broadcast System. The bottom line is, FCC and state policy is that stations monitor a CPCS-1 station in their own operational area. Monitoring of foreign CPCS-1 stations or non-CPCS stations will only inhibit the flow of local and regional emergency information. It adds an extra link in the "EBS Chain" that can only be an additional point of failure and hinder the flow of emergency information.

The undersigned states under penalty of perjury that this technical statement and associated exhibits was prepared by him or under his direct supervision and that all facts contained herein are true to the best of his knowledge.



Joe Sanford Mauk

February 25, 1993

California State system resources, two systems serving major population centers in southern California are proposed to be employed. One, the Air Quality Management District (AQMD) system, covers all of the Los Angeles and Orange County Operational Areas and portions of the San Bernardino and Riverside Operational Areas. The other, a San Diego County radio system, reaches all of the key EBS stations in the San Diego Operational Area. Most of the radio stations in both of these large area systems are already equipped with alert monitor receivers, decoders and, in many installations, automatic tape recorders.

Virtually any broadcast station within range of one of the State's mountaintop transmitters, Los Angeles' AQMD system, and the San Diego County's "LIFE" (Lifesaving Information For Emergencies) radio system will be able to receive State Relay Network transmissions with a suitable programmable monitor receiver. The ready availability and low cost of programmable scanning monitor receivers makes this a cost-effective approach to maximum dissemination of State and regional EBS programming.

The State mountaintop transmitters in the State Relay Network and their transmit frequencies are shown in Attachment 1.

1.3.2 Definitions

The following are some commonly used terms and abbreviations used in this and other EBS Plans:

Attention Signal

The two-tone signal (853 and 960 Hz) used to activate EBS monitor receivers at broadcast stations. Every broadcast station is required to have both an Attention Signal encoder and decoder/receiver in working condition. Every station must send and receive an EBS test weekly with this equipment.

CPCS Common Program Control Station. The broadcast facility designated by the FCC to serve as the control station for all other AM, FM and TV broadcast stations in the EBS Operational Area. Emergency information received from the CPCS is rebroadcast by the other participating stations. CPCS-1 indicates the primary station. Usually one or more stations within the EBS Operational Area are designated as alternates (CPCS-2, CPCS-3, etc.)

EBS The Emergency Broadcast System. A system developed to disseminate emergency information to the public from Federal, State, and local levels which can be rapidly activated during times of emergency. The system involves the voluntary participation of media representatives who have made their facilities available in support of EBS. The goal in California is for 100% participation in EBS by the state's broadcasters.

CALIFORNIA STATE EBS PLAN

ATTACHMENT 3

OPERATIONAL AREAS IN THE CALIFORNIA EBS PLAN

OPERATIONAL AREA NAME:	CPCS-1	CPCS-2	CPCS-3	CPCS-4
Del Norte County	KPOD			
Siskiyou County	KSYC			
Modoc County	KCNO			
Humboldt County	KRED	KINS	KATA	KIEM-TV
Redding	KSXO			
Shasta County				
Trinity County				
Lassen County	KSUE AM & FM			
Mendocino	KUKI & KIAH(FM)			
Lake County				
Mendocino County				
Mid-Sacramento Valley	KHSL	KPAY	KORV	KBLF
Counties of:				
Butte, Glenn, Plumas, Sierra, Tehama				
Marysville-Yuba City	KRFD AM & FM			
Counties of:				
Colusa, Sutter, Yuba				
Sacramento	KFBK	KRAK	KGNR	
Counties of:			KCRA-TV	
Alpine, El Dorado, Placer, Nevada, Sacramento, Yolo				
Bay Counties.....	KNBR	KCBS	KGO	
	KYUU(FM)			
Counties of:				
Alameda, Contra Costa, Marin, San Mateo, San Francisco				
Sonoma County.....	KSRO			
Napa County				
Solano County				
Santa Clara County.....	KHTT	KLOK	KEEN	
			KBAY(FM)	

Stockton KJOY KWG
 KJAX (FM)
 Counties of Amador, Calaveras, and San Joaquin

Modesto KTRB KHOP (FM)
 Counties of Stanislaus and Tuolumne

Fresno KMJ KFRE KYN0 KNKS
 KMJ (FM)
 KMJ-TV
 Counties of: Fresno, Kings, Madera, Mariposa, Merced, Tulare

Bishop KBOV
 Counties of: Inyo, Mono

Monterey Bay KSCO KTOM KMBY (FM)
 KSCO (FM)
 KSCO-TV
 Counties of Santa Cruz, Monterey, San Benito

Bishop..... KIBS
 Counties of: Inyo, Mono

Santa Barbara/San Luis Obispo.. KVEC KIST KATY KDB KSMA
 Counties of:
 San Luis Obispo, Santa Barbara
 KDB (FM) KSMA (FM)

Kern County KUZZ KPMC KERN

Ventura County KOGO KVEN KOXR KAAP KTRO
 KBBY (FM)

Los Angeles KFI KNX KROQ KGER KWKW

Orange KEZY KWIZ

San Bernardino County KFXM KNSE KIOT
 KDUO (FM) KNTF (FM)

Riverside County..... KFXM KCHV (FM) KDES (FM) KCMJ
 KDUO (FM)

San Diego County..... KKLQ KCBQ KFMB KSDO KPQP
 KKLQ (FM) KFMB (FM) KGB (FM)
 KFMB-TV

Imperial County..... KICO KXO KROP

HENRY BROADCASTING CO.
 FIGURE 2C

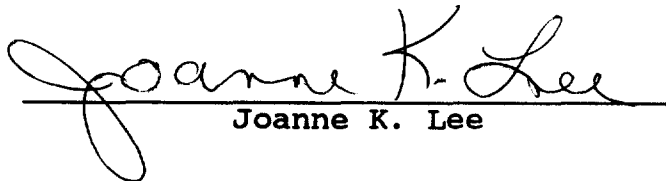
CERTIFICATE OF SERVICE

I, Joanne K. Lee, a secretary with the law firm of Kaye, Scholer, Fierman, Hays & Handler, do hereby certify that a copy of the foregoing "Reply to Opposition to Motion to Accept Late Filed Comments" was mailed this 3rd day of March, 1993, first class, postage prepaid, to the following:

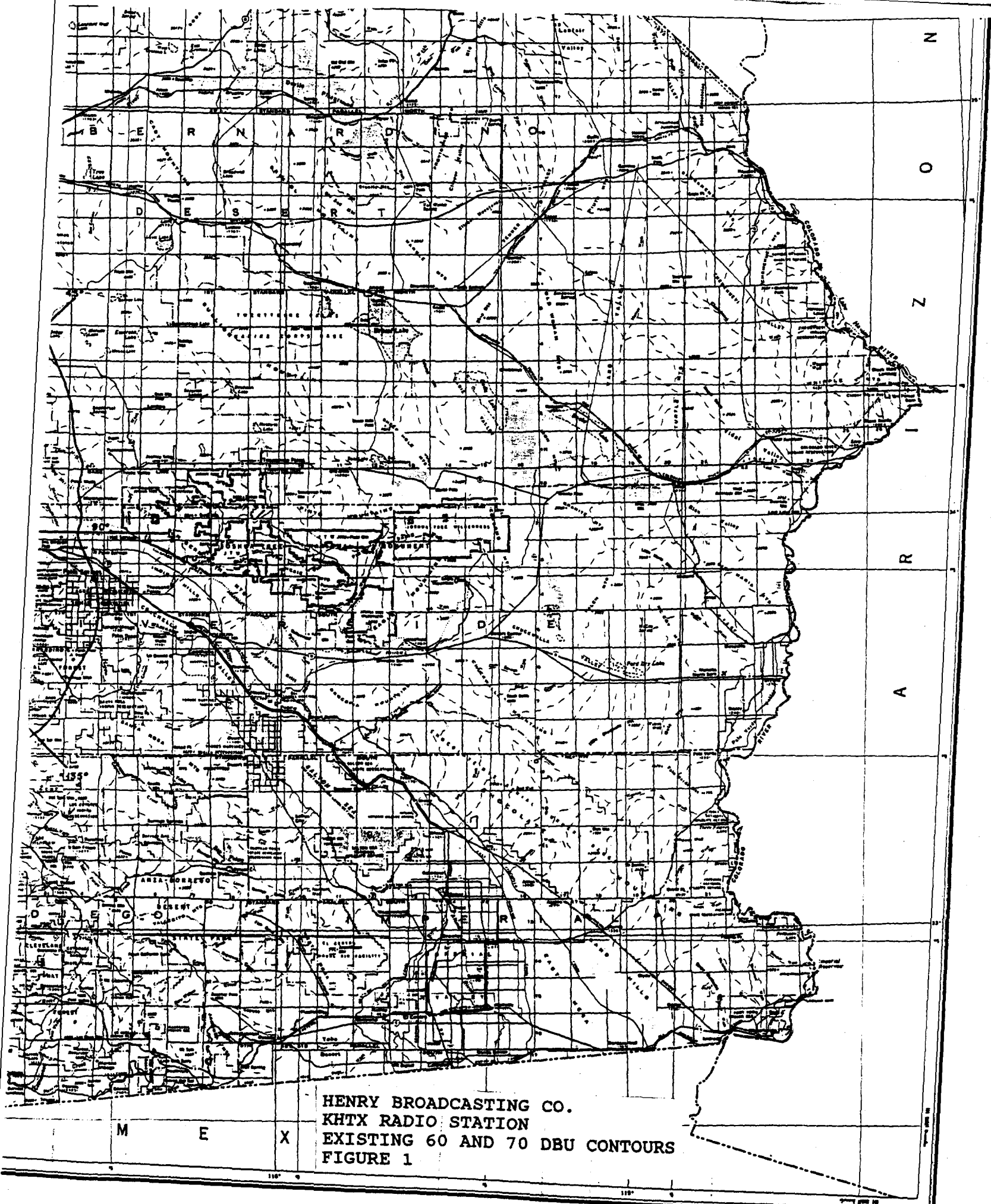
Mr. Michael Ruger, Chief*
Allocations Branch
Federal Communications Commission
2025 M Street, N.W., Room 8322
Washington, D.C. 20554

Ms. Nancy Joyner*
Federal Communications Commission
2025 M Street, N.W., Room 8314
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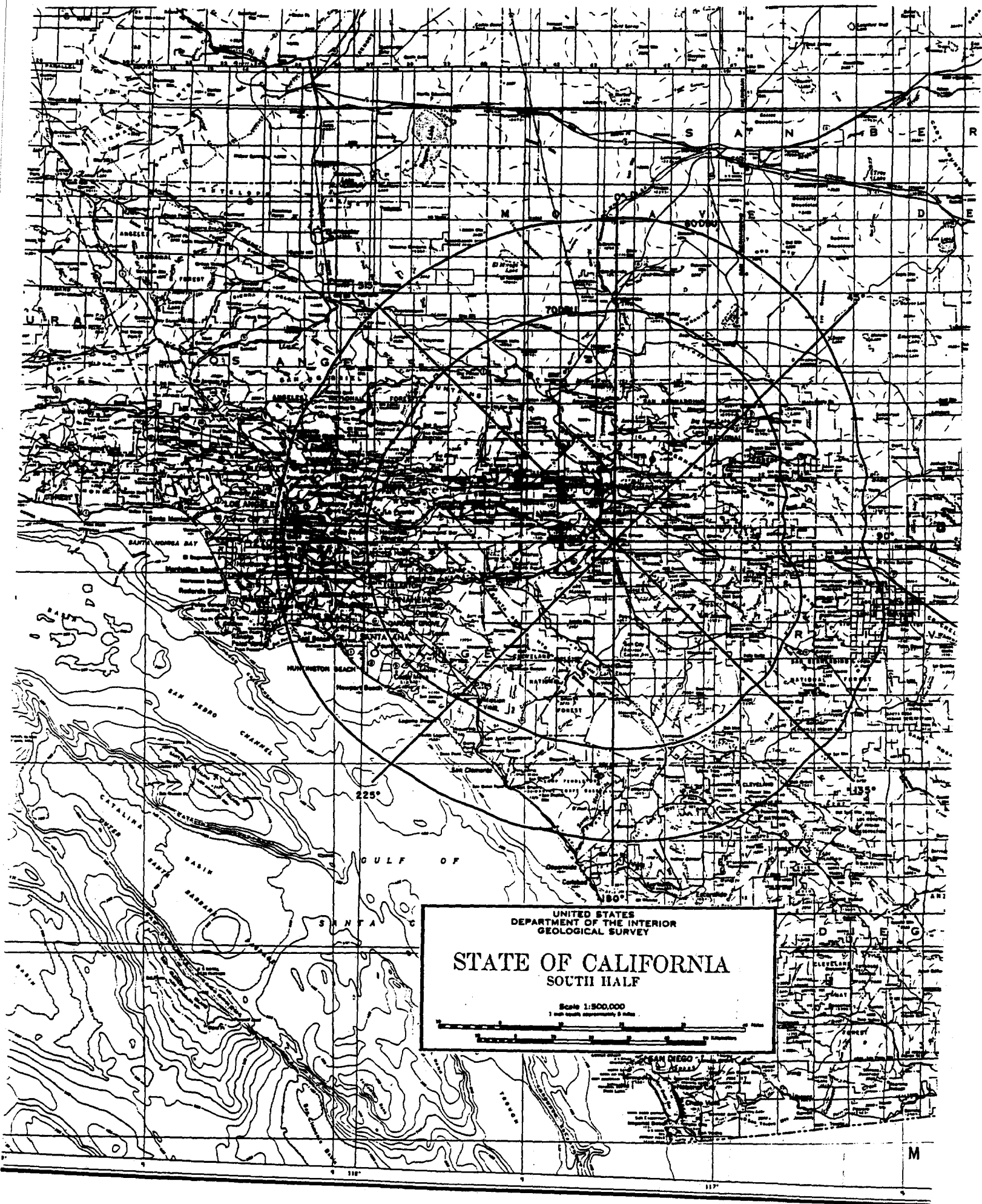
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Joanne K. Lee

*Hand delivered.



HENRY BROADCASTING CO.
KHTX RADIO STATION
EXISTING 60 AND 70 DBU CONTOURS
FIGURE 1



UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

STATE OF CALIFORNIA
SOUTH HALF

Scale 1:500,000
1 inch equals approximately 8 miles